

Introduced by Senator Ortiz

December 7, 2004

An act to add Article 3 (commencing with Section 127400) to Chapter 2 of Part 2 of Division 107 of the Health and Safety Code, relating to hospitals.

LEGISLATIVE COUNSEL'S DIGEST

SB 24, as amended, Ortiz. Hospital charity care.

Existing law provides for the Office of Statewide Health Planning and Development, which is charged with enforcement of various provisions of law relating to health facilities, including hospitals, as defined.

This bill would require each general acute care hospital, acute psychiatric hospital, and special hospital, except a facility owned or operated by the State Department of Mental Health or the Department of Corrections, to develop a charity care and reduced payment policy, as defined, specifying the financial criteria and procedure used by the hospital to determine whether a patient is eligible for defined charity care or payment allowances, and a charity care and reduced payment application, as defined, in accordance with requirements established by the bill. It would require each hospital to perform various functions in this regard, including notifying patients of the hospital's charity care and reduced payment policy in a language-appropriate manner.

The bill would authorize the office to develop a charity care and reduced payment application or standard elements for each hospital's application, in consultation with interested parties. It would also limit debt collection activities of a hospital and its agents, collection agencies, or assignees for the first 150 days after discharge of a patient

who received treatment under a charity care or reduced payment policy.

The bill would require a nonprofit hospital organized as a public benefit corporation to demonstrate compliance with the above provisions and, *except for certain children's hospitals*, demonstrate that the hospital's charity care expenditures constitute at least ___% of its net—~~operating~~ *patient* revenues. The bill would authorize the Attorney General to authorize an investigation to determine whether a nonprofit hospital is in compliance.

The bill would authorize the director of the office to levy civil penalties for violations of any of the above provisions, and would authorize any person damaged by a violation of any of the above provisions to bring an action to recover damages and civil penalties.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 3 (commencing with Section 127400) is
2 added to Chapter 2 of Part 2 of Division 107 of the Health and
3 Safety Code, to read:

4
5 Article 3. Charity Care Policies
6

7 127400. As used in this article, the following terms have the
8 following meanings:

9 (a) "Charity care and reduced payment application" means the
10 statewide charity care and reduced payment application
11 developed by each hospital that is subject to the requirements of
12 this article.

13 (b) "Charity care and reduced payment policy" means the
14 financial criteria and the procedure used by a hospital to
15 determine whether a patient is eligible for charity care or reduced
16 payment pursuant to Section 127405, the process by which the
17 hospital reviews its charity care and reduced payment decisions,
18 and the reduced payment schedule adopted by the hospital.

19 (c) "Hospital" means any facility that is required to be licensed
20 under subdivision (a), (b), or (f) of Section 1250, except a facility
21 owned or operated by the State Department of Mental Health or
22 the Department of Corrections.

1 (d) “Office” means the Office of Statewide Health Planning
2 and Development.

3 (e) “Reduced payment schedule” means a schedule of payment
4 allowances that is applicable to persons deemed eligible by the
5 hospital for reduced cost care.

6 (f) “Uninsured” means a person who does not have health
7 insurance and is not currently covered by any third-party payer
8 program.

9 (g) “Underinsured” means a person whose deductibles,
10 copayments, or medical or hospital bills after payment by
11 third-party payers exceed the patient’s ability to pay as
12 determined in accordance with the hospital’s charity care and
13 reduced payment policy.

14 127405. (a) Each hospital shall develop a charity care and
15 reduced payment policy and application that meets the
16 requirements of this article.

17 (b) Each hospital’s charity care and reduced payment policy
18 shall, at a minimum, provide that patients whose income is at or
19 below 400 percent of the federal poverty level are eligible to
20 receive financial assistance in the form of charity care or
21 payment allowances.

22 (c) Each hospital’s charity care and reduced payment policy
23 shall limit the payment liability of eligible persons to the
24 payment that is the equivalent to the higher of the payments the
25 hospital would receive from Medicare, Medicaid, or workers’
26 compensation for the applicable service.

27 127410. (a) Each hospital shall provide patients with oral and
28 written notice of the hospital’s charity care and reduced payment
29 policy if clinically appropriate at the time of admission, and
30 during the discharge process, in a manner similar to that required
31 pursuant to Section 12693.30 of the Insurance Code. All written
32 correspondence to the patient required by this article shall also be
33 language appropriate.

34 (b) A general description of the hospital’s charity care and
35 reduced payment policy shall be clearly and conspicuously
36 posted in locations that are visible to the public, including, but
37 not limited to, all of the following:

38 (1) Emergency department, if any.

39 (2) Billing office.

40 (3) Waiting rooms.

1 (4) Outpatient settings.

2 (5) Any other location determined by the office to ensure that
3 all patients are informed of the policy and informed about how to
4 obtain a copy of the policy and related information.

5 (c) The general description described in subdivision (b) shall
6 include, but not be limited to, all of the following:

7 (1) A description of the types of services that are provided.

8 (2) A description of the financial criteria used to determine
9 eligibility for charity care and reduced payment.

10 (3) Information about the hospital's reduced payment
11 schedule.

12 (4) Information about how to apply for charity care or reduced
13 payments.

14 (5) A statement inviting comments and complaints regarding
15 the hospital's policy, including directions on how to submit
16 comments.

17 127415. The office, in consultation with interested parties,
18 may develop a uniform charity care and reduced payment
19 application or standard elements for each hospital's charity care
20 and reduced payment application. In developing the application
21 or elements, the office shall consider the application used for the
22 Medi-Cal program and the Healthy Families Program.

23 127420. (a) Each hospital shall attempt to obtain from the
24 patient or his or her representative information about whether
25 private or public health insurance or sponsorship may fully or
26 partially cover the charges for care rendered by the hospital to a
27 patient, including, but not limited to, any of the following:

28 (1) Private health insurance.

29 (2) Medicare.

30 (3) The Healthy Families Program.

31 (4) The Medi-Cal program.

32 (5) California Children's Services Program.

33 (b) If a patient has not provided proof of coverage by a third
34 party at the time care is provided or upon discharge, the hospital,
35 as part of any billing to the patient, shall provide the patient with
36 a clear and conspicuous notice that includes each of the
37 following:

38 (1) A statement of charges for services rendered by the
39 hospital.

1 (2) A request that the patient inform the hospital if the patient
2 has health insurance coverage, or coverage under Medicare, the
3 Healthy Families Program, the Medi-Cal program, or other
4 coverage.

5 (3) A statement that if the consumer does not have health
6 insurance coverage, he or she may be eligible for coverage under
7 Medicare, the Healthy Families Program, the Medi-Cal program,
8 the California Children's Services Program, or charity care or
9 reduced payment.

10 (4) A statement indicating how patients may obtain
11 applications for the Medi-Cal program and the Healthy Families
12 Program and that the hospital will provide these applications on
13 request. If, at the time care is provided, the patient does not show
14 proof of coverage by a third-party payer specified in subdivision
15 (a), the hospital may send an application for the Medi-Cal
16 program and the Healthy Families Program to the patient. This
17 application may accompany the billing or may be sent separately.

18 (5) Information regarding charity care and reduced payment
19 application, including the hospital contact for additional
20 information and a statement indicating how patients may obtain a
21 charity care and reduced payment application from the hospital.

22 (c) For the purposes of the notice required under subdivision
23 (b), a hospital may incorporate the items required into its existing
24 billing statements and shall not be required to develop a separate
25 notice.

26 127422. (a) In order to facilitate payment by public or
27 private third-party payers, debt collection activities of a hospital
28 and its agents, collection agencies, or assignees for the first 150
29 days after discharge or the date health care services are provided
30 shall be limited to the following:

31 (1) Billing and collecting from a patient an amount due.

32 (2) Attempting to negotiate payment of the bill or a payment
33 plan in accordance with this article.

34 (3) Attempting to collect payment from any responsible
35 third-party payer, either public or private.

36 (4) Providing any information that may assist the patient in
37 obtaining coverage through the Medi-Cal program, Healthy
38 Families Program, or any other public program for which the
39 patient may be eligible.

1 (5) Assisting the patient in applying under the hospital's
2 charity care and reduced payment policy.

3 (6) Attempting to make a final determination as to whether the
4 patient is eligible for charity care or reduced payment under the
5 hospital's charity care and reduced payment policy.

6 (7) Providing any notices required by state or federal law.

7 (b) (1) A hospital, or the hospital's agent, collection agency,
8 or assignee, performing the hospital's obligation under this
9 subdivision, shall use reasonable efforts to negotiate a payment
10 plan during the time period specified in subdivision (a).

11 (2) For the purposes of this subdivision, reasonable efforts to
12 negotiate a payment plan shall consist of two efforts to contact
13 the patient by telephone and two efforts to contact the patient by
14 mail. This requirement shall not apply if the patient has requested
15 that the hospital, or the hospital's agent, collection agency, or
16 assignee, not contact the patient.

17 (c) After the time period specified in subdivision (a) has
18 elapsed, the hospital or its agent, collection agency, or assignee
19 may engage in any other debt collection activity otherwise
20 permitted by law, including reporting nonpayment or any other
21 adverse information to a consumer credit reporting agency, any
22 other adverse action, as defined in Section 1785.3 of the Civil
23 Code, and commencing any civil action against the patient for
24 nonpayment.

25 (d) Notwithstanding subdivision (c), a hospital or the
26 hospital's agent, collection agency, or assignee, shall not use
27 wage garnishments or liens on primary residences as a means of
28 collecting unpaid hospital bills for patients who qualify for
29 charity care and reduced payments under Section 127405.

30 (e) Nothing in the section shall be construed to diminish or
31 remove any protections that consumers have under existing state
32 and federal debt collection laws.

33 127424. Each hospital shall annually provide to the office a
34 copy of its charity care and reduced payment policy, eligibility
35 procedures, review process, and procedure for determining
36 reduced payments, in a format determined by the office.

37 127426. To the extent that any requirement of Section
38 127405 results in a federal determination that a hospital's
39 established charge schedule or published rates are not the
40 hospital's customary or prevailing charges for services, the

1 requirement in question shall be inoperative with respect to a
2 hospital that is licensed to, and operated by, a county or a
3 hospital authority established pursuant to Section 101850. The
4 State Department of Health Services shall seek federal guidance
5 regarding modifications to the requirement in question. All other
6 requirements of this article shall remain operative.

7 127428. Nothing in this article shall be construed to prohibit
8 a hospital from uniformly imposing charges from its established
9 charge schedule or published rates, nor shall this article preclude
10 the recognition of a hospital's established charge schedule or
11 published rates for the Medi-Cal program and the Medicare
12 program reimbursement charges.

13 127430. Notwithstanding any other provision of law, the
14 amounts paid by parties for services resulting from the schedule
15 of payment allowances that are applied under a hospital's charity
16 care and reduced payment policy shall not constitute a hospital's
17 uniform, published, prevailing, or customary charges, its usual
18 fees to the general public, or its charges to non-Medi-Cal
19 purchasers under comparable circumstances, for purposes of any
20 payment limit under the federal medicaid program, the Medi-Cal
21 program, or any other federal or state-financed health care
22 program.

23 127431. A nonprofit hospital organized as a public benefit
24 corporation, or any other nonprofit hospital corporation exempt
25 from taxation under Section 501(c)(3) of the Internal Revenue
26 Code or under Section 214 or 23701d of the Revenue and
27 Taxation Code, shall do both of the following:

28 (a) Demonstrate compliance with this article.

29 (b) Demonstrate that the hospital's charity care expenditures,
30 as reported to the office, constitute at least ____ percent of its net
31 ~~operating~~ patient revenues, as reported to the office. *This*
32 *subdivision shall not apply to children's hospitals as defined in*
33 *Section 10727 of the Welfare and Institutions Code.*

34 127432. The Attorney General may authorize an investigation
35 to determine whether a nonprofit hospital is in compliance with
36 this article.

37 127433. (a) For violations of this article, the director of the
38 office may, after appropriate notice and opportunity for hearing,
39 levy civil penalties as follows:

1 (1) A hospital that violates any provision of this article, except
2 for subdivision (c) of Section 127405, shall be liable for civil
3 penalties of not more than five hundred dollars (\$500) per day for
4 each violation.

5 (2) A hospital that bills a patient for amounts in excess of
6 those provided for in Section 127405 shall be liable for a civil
7 penalty of three times the amount billed in error to the patient.

8 (b) Any money that is received by the office pursuant to this
9 section shall be paid into the General Fund.

10 127434. Any person damaged by a violation of this article
11 may bring an action to recover all of the following:

12 (a) Actual damages.

13 (b) Civil penalties of not more than five hundred dollars
14 (\$500) per day for each violation.

15 (c) For a violation of subdivision (c) of Section 127405, three
16 times the amount billed to the patient.

17 (d) For intentional or willful violations of this article,
18 exemplary damages, in an amount the court deems proper.

19 (e) Equitable relief as the court deems proper.

20 (f) Reasonable attorneys' fees and court costs.

21 127436. The rights, remedies, and penalties established by
22 this article are cumulative, and shall not supersede the rights,
23 remedies, or penalties established under other laws.